



STATE OF WASHINGTON
WASHINGTON STATE BOARD OF HEALTH
*1102 SE Quince Street • PO Box 47990
Olympia, Washington 98504-7990*

December 10, 2002

TO: Washington State Board of Health Members

FROM: Tom Locke, Board Member

RE: CR-102 HEARING—EMERGENCY POWERS, CHAPTERS 246-100 & 101 WAC

Background and Summary

At its September 11 meeting, the Board held a hearing on a proposed revision to chapters 246-100 and 246-101 WAC that would establish procedures for isolation and quarantine. It would also iterate in rule the enforceability of a detention order issued by a local health officer. After the September meeting, Craig McLaughlin worked with the Board's counsel and me to produce another iteration of the rule that reflects feedback received during the comment period and at the hearing. The revised version appeared in the Washington State Register as a supplemental CR-102 (WSR 02-22-107). Today we will be holding a second public hearing on the rule with an eye toward adoption.

There have been several changes since the last draft (see summary attached). The three most significant are:

1. The new sections have been reorganized to do a better job of differentiating and defining the various hearing processes.
2. The burden of proof for court proceedings under the version heard in September was "preponderance of evidence." In the current draft, hearings to hold someone for the initial ten days would require meeting a standard of "reasonable basis." Detaining someone for up to 30 days, however, would require meeting a standard of "clear, cogent, and convincing."
3. The latest draft includes the right to a government-funded attorney for indigents. The indigency standard may lower state and local fiscal exposure. Without it, the courts might determine that right to counsel implies a right to government-funded counsel for anyone who is detained and requests government-funded representation regardless of financial need.

Recommended Board Action

The Board adopts the proposed rule revisions as published in WSR 02-22-107 with the changes agreed to in the meeting and directs the executive director to submit a CR-103 to that effect.

Attachments